

**IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF WEST VIRGINIA**

HUNTINGTON DIVISION

WALTER MICHAEL MURPHY,

Plaintiff,

v.

CIVIL ACTION NO. 3:20-0613

PRIMECARE,

Defendant.

MEMORANDUM OPINION AND ORDER

This action was referred to the Honorable Omar J. Aboulhosn, United States Magistrate Judge, for submission to this Court of proposed findings of fact and recommendations for disposition, pursuant to 28 U.S.C. § 636(b)(1)(B). The Magistrate Judge has submitted findings of fact and a recommendation that the Court grant Defendants PrimeCare Medical's Motion to Dismiss and Alternative Motion for Summary Judgment (ECF No. 36) on the ground that Plaintiff Walter Michael Murphy had not exhausted his administrative remedies.

On June 23, 2021, Plaintiff Murphy filed an objection to the Magistrate Judge's Proposed Findings and Recommendations (ECF No. 81). Plaintiff reiterates his assertion that he was not aware of the applicable grievance procedures and requires counsel. Plaintiff also attached a grievance form dated January 17, 2021, a response to that form titled "Review by Health Care Director," and another grievance dated July 8, 2020.

As best this Court can tell, the form dated July 8, 2020, is the original grievance form Plaintiff submitted to the West Virginia Department of Corrections and Rehabilitation four days after the incident at issue. The Magistrate Judge rightly held that Plaintiff failed to appeal the


unfavorable response to that grievance, and therefore failed to exhaust his administrative remedies.

As for the January 17, 2021, grievance form and response, it appears to this Court that this reflects another attempt by Plaintiff to correct his failure to appeal. However, as stated by the Magistrate Judge, West Virginia requires an inmate to file a grievance “within fifteen (15) days of any occurrence that would cause him/her to file a grievance.” W. Va. Code R. § 90-9-4.1. Because Plaintiff did not exhaust his administrative remedies through his original grievance, the Court must reject his objection.

Accordingly, the Court accepts and incorporates herein the findings and recommendations of the Magistrate Judge and **GRANTS** Defendant’s Motion to Dismiss consistent with the Proposed Findings and Recommendations; and **DISMISSES** this action from the docket of the Court, consistent with the findings and recommendations.

The Court **DIRECTS** the Clerk to send a copy of this Order to counsel of record and any unrepresented parties.

ENTER: July 20, 2021



ROBERT C. CHAMBERS
UNITED STATES DISTRICT JUDGE